Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Promoting Telehealth in Rural America	)	WC Docket No. 17-310
	)	

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) submits these comments in response to the Commission's proposal seeking to improve the universal service rural health care support programs.[1] There are some steps the Commission can take to ensure that funds are used responsibly and appropriately without imposing additional, unnecessary burdens on service providers, while also streamlining the rural health care funding process and encouraging efficient and effective participation in the program.

I. THE COMMISSION SHOULD TAKE STEPS TO ENSURE THAT RURAL HEALTH CARE FUNDS ARE USED APPROPRIATELY

In considering reforms to the rural health care support programs, the Commission should make sure that funding is being used as efficiently as possible to achieve the objectives of the statute. To this end, the Commission should: (1) provide guidance to applicants regarding the specificity necessary in describing requested services; (2) update the safe harbor bandwidth tiers used to define services that are considered "functionally similar;" (3) establish a list of services eligible for support under the rural health care programs; (4) make publicly available information on the services and prices that health care providers obtain with funding from the rural health care programs; and (5) require participants in the rural health care support programs to certify that their consultants are abiding by program rules and procedures.

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[1] *Promoting Telehealth in Rural America*, WC Docket Nos. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631 (2017) (*NPRM*). These programs include the Telecommunications Program (Telecom Program) and the Healthcare Connect Fund (HCF).

A. The Commission Should Instruct Applicants to Provide Sufficient Specificity When Requesting Services

As the Commission notes in the *NPRM*, "[H]ealthcare providers need not provide much detail about their service needs when posting their requests for services, nor do they need to provide detailed information to potential bidders about how they will score responsive bids. This lack of transparency about the healthcare provider's needs and its anticipated vendor selection process, may lead to inefficiencies in the competitive bidding process."[2]

NCTA agrees that the Commission should ask applicants to clearly delineate the services being requested. When health care providers do not use requests for proposals (RFPs), and instead rely on the service description portion of the FCC Forms 461 or 465, NCTA member companies have noted instances where the service description is overly vague, or, in some cases, even blank. It is very difficult, if not impossible, for potential bidders to compete to provide services that are not clearly described. If providers do not respond to requests for services for this reason, health care providers and the rural health care fund may be paying more than is necessary. This problem could be addressed if applicants clearly and sufficiently describe the services for which they are seeking bids and funding.

Similarly, providing clear, upfront information about how bids will be evaluated will allow service providers to submit more competitive bids. Furthermore, requiring healthcare providers to offer more specificity as to their evaluation criteria would not meaningfully increase their costs, as they are required to develop such criteria in any event.[3] And any modest cost increases for healthcare providers would be outweighed by the benefits of introducing additional

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[2] *Id.* at 10657, ¶82.

[3] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16776, ¶222 (2012) ("Applicants must develop appropriate evaluation criteria for selecting the winning bid *before* submitting a request for services to USAC to initiate competitive bidding." (emphasis in original)).

accountability and transparency, as well as facilitating review by USAC and reducing complaints about the competitive bidding process.

B. The Commission Should Update the Bandwidth Tiers for Functionally Similar Services

For fifteen years, the Commission has viewed the similarity of services for the Telecom Program from a functional perspective: "[S]ervices are 'similar' under 254(h)(1)(A) if they are '*functionally* similar as viewed from the perspective of the end user.'"[4] To implement this standard, the Commission utilizes a safe harbor mechanism, "whereby a healthcare provider could claim that two services are similar if they both fall within one of five speed tiers."[5] As it proposes in the *NPRM*, the Commission should continue to use bandwidth tiers in a safe harbor mechanism to determine services that are "functionally similar" when determining the relevant rural or urban rates, but should update those tiers to reflect more current market developments.[6] The five bandwidth speed tiers currently are: low – 144-256 kbps; medium – 257-768 kbps; high – 769 kbps-1.4 Mbps; T-1 – 1.41-8 Mbps; and T-3 – 8.1-50 Mbps.[7] The Commission is correct in seeking to update these tiers given the changes in market conditions and in the speeds of services since 2003.

The Commission seeks comment on a proposal to establish tiers for functionally similar services based on the speed of the service requested by the health care provider.[8] Specifically, similar services would include all services within 30 percent of the requested bandwidth.[9] Under this approach, if a health care provider requested a 50 Mbps service, services between 35 Mbps

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4 *NPRM*, 32 FCC Rcd at 10655, ¶73 (citing *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24546, 24563, ¶33 (2003) (*2003 RHC Order*)).

5 *NPRM*, 32 FCC Rcd at 10655, ¶73.

6 *Id.* at 10655, ¶75.

7 *2003 RHC Order*, 18 FCC Rcd at 24564, ¶34.

8 *NPRM*, 32 FCC Rcd at 10655, ¶76.

9 *Id.*

and 65 Mbps would be considered "functionally equivalent" in determining the rates, with the average rural rate derived by averaging the rates of all services within the 30 percent bandwidth range in the relevant rural area.[10]

NCTA is concerned that the 30 percent range proposed by the Commission may not correctly identify services that are functionally similar. For example, the range identified in the *NPRM* for a 50 Mbps service would include prices of 35 Mbps services and 65 Mbps services, which may not be functionally similar from the perspective of a healthcare provider end user. If the Commission does decide to adopt a percentage range based on the speed of the requested service, a smaller range, such as 10-15 percent, could more appropriately identify functionally similar best efforts services. However, packet-based services offered with service guarantees and service level agreements (SLAs) may require a different comparison.

As an alternative to adopting a percentage safe harbor, the Commission could instead update the current bandwidth tiers in the safe harbor to reflect services that are commonly purchased by health care providers as established in the record of this proceeding and by USAC data. NCTA further urges the Commission to continue to treat otherwise similar symmetrical and asymmetrical services as not functionally similar under its rate models.[11]

C. The Commission Should Identify Services Eligible for Rural Health Care Support

In the *NPRM*, the Commission asks whether it would be useful to establish a list of services eligible for rural health care support.[12] NCTA believes that such a list would indeed be helpful to program participants. The Eligible Services List (ESL) used in the E-rate universal service program has worked well in providing guidance on supported services, as it helps to

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[10] *Id.*

[11] *2003 RHC Order*, 18 FCC Rcd at 24564, ¶34 ("We will also consider whether a service is symmetrical or asymmetrical when determining functional equivalencies.").

[12] *NPRM*, 32 FCC Rcd at 10656, ¶78.

remove ambiguity about eligibility, as well as providing an opportunity for potential participants to receive notice and provide comment on any updates or changes to the services that are eligible for support. Such an approach would be beneficial in the rural health care program, where supported services are likely to change as telemedicine evolves.

D. The Commission Should Make Information on Current Services and Prices Being Funded in the Rural Health Care Program Publicly Available

To provide transparency into the programs, and to enable health care providers to make informed decisions about services and prices, and service providers to submit competitive bids, the Commission should make available information on the current services being purchased and prices being paid by existing participants in the rural health care programs. Making this information publicly available would not impose any additional reporting burdens on program participants, as USAC currently collects this information in the course of administering the programs.[13] In directing USAC to provide this limited E-rate data publicly, the Commission recognized that this would "increase transparency and enable beneficiaries and other stakeholders both to assess progress by schools and libraries in obtaining access to high-speed broadband connectivity and to obtain detailed information from which to determine the cost effectiveness of spending for E-rate products and services by beneficiaries."[14] The same benefits would occur if information from the rural health care programs was made publicly available.

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[13] *Id.* at 10666, ¶104.

[14] *Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15590, ¶128 (2014).

E. The Commission Should Require Program Participants to Certify Their Consultants' Adherence to Program Rules

The Commission notes that USAC currently requires consultants to comply with the same competitive bidding requirements applicable to program participants and asks whether program participants should certify that any consultants they use comply with program rules.[15] Requiring such certification would help to ensure that consultants are held to the same standards as program participants and the Commission should adopt this requirement.

II. THE COMMISSION SHOULD NOT INCREASE BURDENS ON SERVICE PROVIDERS PARTICIPATING IN THE RURAL HEALTH CARE PROGRAMS

To encourage participation in the rural health care programs, the Commission should take care not to increase the burdens placed on service providers that are willing to bid and provide services to health care providers. More robust participation ensures that scarce universal service dollars are used to increase health care and telemedicine availability for consumers, and a wider variety of service offerings are available at more cost-effective prices. To that end, the Commission should not adopt either its proposal to require service providers to justify underlying costs in the rural rate for Telecom Program funding, or its proposal of imposing the burden of calculating the rural and urban rates for the Telecom Program on service providers. Both of these proposals would unduly increase service providers' costs without improving administration of the programs.

A. The Commission Should Not Require Service Providers to Justify Costs in the Telecom Program

The Commission expresses concern that outlier costs in the Telecom Program may be associated with waste, fraud, or abuse. The Commission's primary proposal to address this concern in the *NPRM* is to establish "objective benchmarks to identify outlier funding requests," and then to subject such requests to enhanced USAC review to determine whether the rural rate

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[15] *NPRM*, 32 FCC Rcd at 10659, ¶88.

is too high or the urban rate is too low.[16] To accomplish this, the Commission proposes requiring service providers "to justify the underlying costs in the rural rate presented in the funding request, including the costs materially affecting the price of each feature that the healthcare provider included in its [RFP]."[17]

The Commission should not adopt this proposal, as such a requirement is inconsistent with the Commission's goal of improving the efficiency of the program by "using information already provided by Telecom Program participants to USAC."[18] Moreover, this requirement would impose unreasonable administrative costs on service providers—including prospective service providers who do not ultimately win contracts with healthcare providers, but who nonetheless would need to prepare "justifications" during the bidding process. Finally, these justifications almost always reflect confidential business information on the part of the service provider. While the Commission has methods to mitigate the risk of disclosure of confidential business information, those methods, too, impose administrative costs.

B. Urban and Rural Rate Data

In the *NPRM* the Commission asks whether service providers should be required to provide the urban and rural rates and rate averages for the relevant areas to the health care provider applicants.[19] The Commission should not place the burden of determining the urban and rural rate and rate differentials on service providers. Doing so would impose an entirely new administrative overlay on service providers, increasing their costs, without any indication that they will generate more accurate rate calculations than health care providers.[20] In fact, the formulas for determining rural and urban rates within a state depend on information that, in the

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[16] *Id.* at 10647, 10648-49, ¶¶42, 48.

[17] *Id.* at 10649, ¶49.

[18] *Id.* at 10647, ¶42.

[19] *Id.* at 10653, ¶68.

[20] The Commission provides no explanation for its belief that "the service provider can most easily access the rate information" necessary to calculate the average rates and the discount. *Id.*

ordinary course of business, service providers do not have access to, or collect, about other providers. Furthermore, the Commission's express goal in adopting a methodology for calculating urban and rural rates was to rely on "publicly available data" in order to "minimize administrative burdens on regulators and carriers."[21] It is thus consistent with the principles underlying the programs that healthcare providers currently "obtain these rates from carriers, third party consultants or through other means."[22]

III. THE COMMISSION SHOULD TAKE STEPS TO MAKE THE RURAL HEALTH CARE APPLICATION PROCESS MORE EFFICIENT

In addition to ensuring that program funding is used appropriately, the Commission should strive to improve the process by which health care providers and service providers participate in the program. There are several steps the Commission could take to streamline the process used to apply for rural health care support. First, the Commission should adopt its proposal to consolidate the application forms to four (Eligibility, Request for Services, Request for Funding, and Invoicing/Funding Distribution Form) and allow applicants to use this set of forms for both the rural health care Telecom and HCF programs.[23] As the Commission notes, the HCF and Telecom Programs currently "each have their own online forms to collect information, leading to a total of seven FCC Forms," with different and "fairly intricate filing requirements."[24] Each application, standing alone, can take multiple hours to complete—and the overlapping

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[21] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9126, ¶671 (1997).

[22] *NPRM*, 32 FCC Rcd at 10653, ¶68.

[23] *Id.* at 10662, ¶97.

[24] *Id.* at 10662, ¶96.

nature of these forms can create additional confusion, resulting in further administrative costs. The Commission's proposal would reduce these costs significantly.

Second, the rural health care program should adopt some of the procedures available to participants in the E-rate program.

Invoicing Options: For the rural health care programs, the Commission should offer program participants options in invoicing methods that would allow flexibility in the manner in which services are billed and reimbursed. Currently the health care provider applicant must submit the FCC Form 463 (Invoice and Request for Disbursement), and the service provider must separately review and approve the form before submitting invoices to USAC, which can cause payment delays. Although this method may work well for some participants, others might benefit from the availability of processes similar to the Billed Entity Applicant Reimbursement (BEAR) and Service Provider Invoice (SPI) processes in the E-rate program. As in the E-rate program, under these methods program participants could have USAC provide payments to either the health care provider or to the service provider, depending upon the billing arrangement between the participants.

Create a Tool Similar to the E-rate Entity Download: The Commission should require USAC to create a method, similar to the "E-Rate Entity Download," that could be used to search the addresses of all health care providers participating in the rural health care programs. Currently, service providers are able to search for addresses by reviewing applicants' FCC Forms 465 (Description of Eligibility and Request for Services) online, but this information is not always accurate, especially when the applicant has consolidated accounts or multiple service locations. These addresses also should be listed on all rural health care Funding Commitment Letters.

Provide Additional Time for Service Providers to Certify Information on the FCC Form 463: The Commission should provide service providers an additional fifteen days to certify

information on the FCC Form 463 after the applicant certifies. Under the current rules, both the applicant and the service provider have the same deadline to certify and submit the form. If an applicant waits until the end of the allowed time to certify, it is unlikely that the service provider will be able to adequately review the information and certify accordingly. Providing fifteen additional days would allow service providers to conduct more thorough account reviews and to provide accurate certifications.

Improve Digital Access to Information: When service providers export data from the description of services forms or from RFPs, the URL link for the information should be included. The Commission should direct USAC to add the URL link to the FCC Forms 461 and 465 export files. Additionally, USAC should include the last day to invoice and the Health Care Provider (HCP) number in the rural health care invoice portal. The portal should include the HCP numbers for each invoice and the relevant invoicing deadline.

CONCLUSION

As discussed above, there are several steps the Commission can take to ensure that the rural health care support mechanism is administered successfully.

Respectfully submitted,

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February 2, 2018